

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS NO.21 OF 2005
IN
EXECUTION APPLICATION NO.408 OF 2004
IN
REF.NO.442 OF 2002

Vishal Pasari ...Plaintiff
Versus
Nikko Stock Brokers Pvt.Ltd. ...Defendant
And
Mrs.Karuna P.Saraf & Ors. ...Applicants

.....

Mr.G.B.Kedia for Applicants.
None for Plaintiff.
None for Defendant.

.....

CORAM: A.M.KHANWILKAR, J.
JULY 18, 2005.

P.C.

1. Heard Counsel for the Applicants. None appears for the Plaintiff, though served. No reply

has been filed on behalf of the Plaintiff to oppose this Application. In that sense, averments made in affidavit of support of this Application have remained uncontroverted.

2. From the averments in the affidavit, which are substantiated by the documents on record, it is seen that the flat in question was purchased by the Applicants from one Mrs.Kantadevi Chaudhary, who incidentally happens to be the Director of the Defendant Company. The said flat was owned and possessed by Mrs.Kantadevi Chaudhary in her own rights in view of the Agreement for Sale in her favour dated 15th December 1986. Whereas, the Defendant Company was formed some time in the year 1990, much later. There is nothing on record to even remotely suggest that the premises in question are or were the properties of the Defendant Company. On the other hand, the Sale Deed executed in favour of the Applicants as well as the Society having recognised the Applicants as owners of the flat and have been admitted as members, clearly supports the case of the Applicants. As the Defendant Company was not the owner in respect of

the disputed premises, the Applicants are justified in contending that the same cannot be attached and proceeded further just to execute the decree against the Defendant Company.

3. In the circumstances, Chamber Summons made absolute in terms of prayer clauses (a), (b) and (c).

4. Insofar as prayer clause (d) is concerned, it will be open to the Applicants to take recourse to such other remedy as may be permissible by law.

5. Application disposed of in the above terms. No order as to costs.

A.M.KHANWILKAR, J.